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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके  
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 7 दिसम्बर, 1983

आदेश

आ० अ० 3—निर्वाचन आयोग का समाधान हो गया है कि नीचे की मारणी के स्मृति (4) में विनिर्दिष्ट निर्वाचन लड़ने वाले अभ्यर्थी, स्मृति (2) में विनिर्दिष्ट जम्मू-कश्मीर विधान सभा के लिए, उनके नाम के सामने स्मृति (3) में विनिर्दिष्ट तत्स्थानी निर्वाचन-क्षेत्र में हुए निर्वाचन में जम्मू-कश्मीर लोक प्रतिनिधित्व अधिनियम, 1957 तथा तद्विनिर्देशित बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों के लेखों जैसा कि उक्त मारणी के स्मृति (5) में दिया गया है, दाखिल करने में असफल रहे हैं :

और, उक्त अभ्यर्थियों ने, उन्हें सम्पर्क सूचना दिए जाने पर भी उक्त हम असफलता के लिए या तो कोई कारण अथवा स्पाटीकरण नहीं दिया है, या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो तो, विचार करने के बाद निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास हम असफलता के लिए कोई पर्याप्त कारण अथवा स्पाटीकरण नहीं है ;

अतः, अब, उक्त अधिनियम की धारा 24-ई के अनुसरण में, निर्वाचन आयोग नीचे की मारणी के स्मृति (4) में विनिर्दिष्ट व्यक्तियों का समूह के किसी भी मवन के या जम्मू-कश्मीर राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए हम आदेश की तारीख में तीन वर्ष की आलावधि के लिए निरहित घोषित करता है :—

मारणी

क्रम सं०	निर्वाचन का विवरण	सभा निर्वाचन-क्षेत्र का क्रम संख्या और नाम	निर्वाचन लड़ने वाले अभ्यर्थियों का नाम व पता	निरहता के लिए कारण
(1)	(2)	(3)	(4)	(5)
	जम्मू-कश्मीर विधान सभा 1983 के लिए, माध्यम निर्वाचन।	32-शापियान सभा निर्वाचन क्षेत्र	श्री निजामुद्दीन निवास—चौटीपोरा शोपियान, जिला पुलवामा (जम्मू-कश्मीर)	लेखा दाखिल नहीं किया
2.	—बही—	43-लेह सभा निर्वाचन-क्षेत्र	श्री सोनम बांगचुक नागू, निवास—स्कारा मेह, लद्दाख, (जम्मू-कश्मीर)	—बही—
3.	—बही—	62-जम्मू पूर्व सभा निर्वाचन-क्षेत्र	श्री मुभाष चन्द्र, अम्बिका बहन, जैन बाजार, जम्मू (जम्मू-कश्मीर)	—बही—

[सं० 76/ज०क०-वि०स०/83(1)]

## ELECTION COMMISSION OF INDIA

## ORDER

New Delhi, the 7th December, 1983

**O.N. 3.**—Whereas the Election Commission is satisfied that the contesting candidates specified in column (4) of the Table below at the election to the Jammu & Kashmir Legislative Assembly as specified in column (2) and held from the constituency correspondingly specified in column (3) against their names have failed to lodge accounts of their election expenses, as shown in column (5) of the said

Table, as required by the Jammu and Kashmir Representation of the People Act, 1957 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 24-E of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of the State of Jammu & Kashmir for a period of three years from the date of this order.

TABLE

S.No. Particulars of election	S.No. & name of assembly Constituency	Name & Address of contesting candidates	Reason for disqualification
(1)	(2)	(3)	(4)
1. General election to Jammu & Kashmir Legislative Assembly, 1983	32-Shopian Assembly Constituency	Shri Nizam-ud-din, R/o Choutupora, Shopian, Distt. Pulwama, (Jammu & Kashmir).	Account not lodged.
2. -do-	43-Leh Assembly Constituency	Shri Sonam Wangchuk Narboo R/o Skara Leh, Ladakh, (Jammu & Kashmir)	-do-
3. -do-	62-Jammu East Assembly Constituency	Shri Subhash Chander, Ambica Bhavan, Jain Bazar, Jammu (Jammu & Kashmir)	-do-

[No. 76/J &amp; K-LA 83 (1)]

नई दिल्ली, 20 दिसम्बर 1983

आ० अ० 4. —लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 21 के उपबन्धों के अनुसरण में तथा तारीख 3 अक्तूबर, 1979 की अपनी अधिसूचना सं० 434/दिल्ली/79 का अधि-क्रमण करने हुए, निर्वाचन आयोग, दिल्ली प्रणामन के परामर्श में नीचे की सारणी के स्तम्भ 2 में विनिर्दिष्ट दिल्ली प्रणामन के आफिसर को, ऐसे आफिसर के सामने उक्त सारणी के स्तम्भ 1 में विनिर्दिष्ट दिल्ली मध्य राज्य-क्षेत्र के समर्पित निर्वाचन-क्षेत्र के लिए गिटनिंग आफिसर के रूप में पदाभिहित करता है —

## सारणी

समर्पित निर्वाचन-क्षेत्र की क्रम संख्या तथा नाम	गिटनिंग आफिसर
1	2
1. नई दिल्ली	अपर जिला मजिस्ट्रेट (मुख्यालय), न्यू कोर्टम्स भवन, तीस हजारी, दिल्ली।
2. दक्षिण दिल्ली	अपर जिला मजिस्ट्रेट (नई दिल्ली, दक्षिण) न्यू कोर्टम्स भवन, तीस हजारी, दिल्ली।

1	2
3. बाह्य दिल्ली	अपर जिला मजिस्ट्रेट (गजम्बर), न्यू कोर्टम्स भवन, तीस हजारी, दिल्ली।
4. पूर्व दिल्ली	अपर जिला मजिस्ट्रेट (उत्तर-पूर्व), न्यू कोर्टम्स भवन, तीस हजारी, दिल्ली।
5. चादनी चौक	निदेशक, मतकर्ता, दिल्ली प्रणामन, दिल्ली (श्री डी० त्रिवेदी)।
6. दिल्ली सदर	डी० आई० जी० (जेल), तिहाड़ जेल, नई दिल्ली, (श्री ए० सी० खेड़)।
7. करौल बाग	अपर जिला मजिस्ट्रेट (एल० ए०): न्यू कोर्टम्स भवन, तीस हजारी, दिल्ली।

[सं० 434/दिल्ली-लोक सं०/83]

आदेश में

धर्मवीर अवर सचिव  
भारत निर्वाचन आयोग

New Delhi, the 20th December, 1983

ON 4—In pursuance of the provisions of Section 21 of the Representation of the People Act, 1951 (43 of 1951) and in supersession of its notification No 434 (13/79) dated the 3rd October 1979 the Election Commission hereby designates in consultation with the Delhi Administration the Office of the Administration specified in Column 2 of the Table below as the Returning Office of the Parliamentary constituency in the Union Territory of Delhi as specified in column 1 of the said table against such office of Administration—

TABLE

S No. and name of the Parliamentary constituency	Returning Office
1	2
1. New Delhi	Additional District Magistrate (Hqrs.) New Courts Building Tis Hazari, Delhi
2. South Delhi	Additional District Magistrate (New Delhi/South) New Courts Building Tis Hazari, Delhi
3. Central Delhi	Additional District Magistrate (Revenue) New Courts Building Tis Hazari, Delhi
4. East Delhi	Additional District Magistrate (North/East), New Courts Building Tis Hazari, Delhi
5. Connaught Place	Director Vigilance Delhi Administration, Delhi (Sri D. Trivedi)
6. Delhi Sadar	D I G (Prison), Tihar Jail New Delhi (Sri A C Kher),
7. Karol Bagh	Additional District Magistrate (L.A.), New Courts Building Tis Hazari Delhi

[No 434/DL-HP/83]

By Order,  
DHARAM VIR Under Secy  
Election Commission of India

New Delhi, the 28th December, 1983

ON 5—In pursuance of sub-section (2) of section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the following order of the Supreme Court of India dated 30th November, 1983 in Civil Appeal No 2539 of 1981 against the Judgment dated 17th August, 1981 of the High Court of Karnataka in Election Petition No 1 of 1980

#### IN THE SUPREME COURT OF INDIA

#### CIVIL APPELLATE JURISDICTION

#### CIVIL APPEAL NO 2539 OF 1981

D. P. Sharma

Appellant

vs.

The Commissioner and Returning Officer and Ors

.. Respondents

#### JUDGMENT

TULZAPURKAR, J.—There is no substance in this election appeal which has been preferred by the defeated candidate

Election to the Lok Sabha seat from the 13th Bangalore South Parliamentary Constituency in the State of Karnataka was held on January 6, 1980. The appellant was a Congress (I) candidate while Respondent No. 12 was a Janata candidate; Respondent No. 12 having polled the highest number of votes, namely 198,390 votes as against 1,92,663 votes polled by his nearest rival the appellant was declared elected, 8,067 votes were rejected as having been invalidly cast. The election Respondent No. 12 was challenged by the appellant by filing an election petition in the Karnataka High Court on several grounds. None of the grounds succeeded and his petition was dismissed. Hence this appeal.

In support of the appeal substantially only one contention was urged by counsel for the appellant. According to him, the records which are required to be maintained under Rules 4 and 20 of the Conduct of Election Rules, 1961 contained discrepancies and irregularities which showed that the entire counting process was defective necessitating a re-count of the votes. Counsel pointed out that under Rule 45 the Presiding Officer is required to prepare a ballot papers account in the prescribed form (Forms 1 & 11) in which details with regard to the ballot papers received, ballot papers unused, ballot papers used at the polling station and ballot papers found in ballot boxes are required to be given, while prescribed Form 20 contains the final result sheet and what has been urged before us by counsel is that if these documents pertaining to all the polling stations in the 8 assembly segments which constituted the Parliamentary constituency, prepared by the concerned Presiding Officers are scrutinised two glaring discrepancies would become apparent—(i) at some polling stations in some of the assembly segments the total ballot papers which were actually found from the ballot boxes at the time of counting were in excess of the ballot papers which were issued and used by the voters at the time of poll, and (ii) in some cases less ballot papers were found in the ballot boxes at the time of counting than what were actually issued and used by the voters. It was strenuously urged that such discrepancies clearly showed that the entire process of counting was improperly done, that the prescribed forms required to be maintained under the statute and the rules were not merely inaccurate but will have to be regarded as unreliable and in this situation no case could be said to have been made out where the Court should order a re-count particularly when Respondent No. 12 was declared elected by a margin of 2727 votes. For the reasons which we shall presently indicate the contention will be found to be without substance.

It appears that during the course of hearing before the High Court, the Returning Officer, who is impleaded as a party respondent to the election petition, was directed to prepare and file a statement showing clearly the discrepancies between the number of ballot papers issued and used by the voters and the ballot papers that were actually found in the ballot boxes and counted and taken into account at the time of counting at all the polling stations in all the 8 assembly segments constituting the 13th Bangalore South Parliamentary Constituency and such statement was prepared and filed by the Returning Officer before the High Court. On a careful examination of this statement it appears to us very clear and this was not disputed by counsel on either side before us, that the total ballot papers (at all the polling stations in all the 8 assembly segments of the parliamentary constituency) which were taken out and counted from the ballot boxes were in excess to the tune of 316 over and above those which were issued and used by the voters while the total number of ballot papers which were found less than those which had been issued and used by the voters was 20. The discrepancy as regards finding of less ballot papers from the ballot boxes than what had been issued and used by the voters is easily understandable for it is quite conceivable that some voters who had got ballot papers issued to them might have walked out of the polling booths without casting them in the ballot boxes and such discrepancy which is the instant case is only to the extent of 20 ballot papers, is not of much significance. It is true that the discrepancy which pertains to finding of excess ballot papers from the ballot boxes over and above those which had been issued and used by the voters would undoubtedly be serious but in the instant case such discrepancy is again in regard to a very

small and insignificant number, namely, 316. It may be stated that the total number of votes that had been cast at the election were to the tune of 4,36,536 and compared to the magnitude of the votes cast the discrepancy as regards the excess ballot papers found in the ballot boxes is too insignificant and in any case it is nowhere near the margin of 2727 votes by which the respondent No. 12 defeated the appellant. We are of the view that these discrepancies are so insignificant in character that they could be safely attributed to accidental slip or clerical or arithmetical mistakes that must have been committed at the time of counting and preparation of the statements in Form 16 and 20. In our view, these discrepancies by themselves do not make out a case for directing a re-count of votes. It is well established that in order to obtain re-count of votes a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by him with some substance that there has been either improper reception of invalid votes in favour of the elected candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour of the elected candidate which had in reality been cast in favour of the defeated candidate. Admittedly, no such material was placed by the appellant either before the High Court or this Court. In that view of the matter by themselves the discrepancies which have been pointed out by counsel for the appellant in the statements required to be prepared under Rules 45 and 56 do not make out a case for directing a re-count of votes.

Apart from the aforesaid aspect of the matter we directly asked counsel for the appellant as to whether it was his client's case that because of the discrepancies appearing in the statement of account of ballot papers (Forms 16 and 20) his client or his agents had stopped participating in the counting process and counsel replied in the negative. In other words, the appellant or his agents had participated in the counting process with regard to each and every ballot paper which was found and taken out from the ballot boxes and raised his objection whenever he or they thought fit to do so; in other words, the discrepancies in the prescribed forms, copies of which were furnished to the appellant or his agents from effectively participating in the counting process. The result was admittedly declared after all objections raised by the appellant or his counting agents during the process of counting had been taken into account and ruled upon by the Presiding Officer and even so no material was placed either before the High Court or before us laying the foundation for obtaining an order for a re-count. In any case, as stated earlier no prejudice is shown to have been caused to the appellant by the discrepancies pointed out in the statutory forms-16 and 20; particularly the discrepancies in regard to the excess ballot papers found would not have affected or altered the result of the election.

Having regard to the above discussion we feel that the High Court was right in dismissing the election petition. The appeal is therefore, dismissed with no order as to costs.

New Delhi.

Dated, November 30, 1983.

Sd/-

V. D. TULZAPURKAR

Sd/-

SABYASACHI MUKHARJI

[No. 82/KT-HP/T/80]

नई दिल्ली, 5 जनवरी, 1984

आ० प्र० 6—1978 की निर्वाचन अधिनियम 2 में द्वाप्राबाद उच्च न्यायालय खजाना के तारीख 15-4-1983 को निर्वाचन से उद्घाटन 1983 की निर्वाचन अधिनियम सं० 5316 (एन०सी०ई०) में भारत के उच्चतम न्यायालय के तारीख 23-11-1983 के निर्वाचन को लोक प्रतिनिधित्व अधिनियम, 1951 की प्रांग 116 (ग) की उपप्रांग (2) के अन्तर्गत (ख) के अनुसरण में, निर्वाचन आयोग प्रकाशित करता है।

New Delhi, the 5th January, 1984

O.N. 6.—In pursuance of clause (b) of sub-section (2) of section 116-C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby publishes the judgment of the Supreme Court of India, dated the 23rd November, 1983 in Civil Appeal No. 5316 (NCE) on 1983 arising from the judgment dated the 15th April, 1983, of the High Court of Judicature at Allahabad, Lucknow Bench, in election petition No. 2 of 1978.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5316 OF 1983

Kumari Shradha Devi

...Appellant.

Versus

Shri R. C. Pant & others

...Respondents.

JUDGMENT

CHINNAPPA REDDY, J.—Despite the commendable pertinacity with which the appellant, Kumari Shradha Devi has, pursued this matter, we are afraid she must fail or blare there was the biennial elections to the Rajya Sabha from the Uttar Pradesh Legislative Assembly Constituency. The members of the Uttar Pradesh Legislative Assembly were required to elect 11 members to the Rajya Sabha. The term for which the members were to be elected was six years. That term will expire in another four months. Such has been the delay of the processes of the law that even if the appellant had been successful in this appeal, she would be a member of the Rajya Sabha for hardly four months though the normal term is six years.

The facts of the case have been fully set out in the judgment pronounced by this court on the earlier occasion when the appellant had approached this court. That judgment is reported in 1982 Vol. III SCC 389. Briefly stated the facts are as follows: There were 19 candidates who sought election to the Rajya Sabha from the Uttar Pradesh Legislative Assembly constituency in March 1978. The appellant was one of them. Eleven members were to be elected and the election was by means of the single transferable vote. 421 members of the Uttar Pradesh Legislative Assembly exercised their franchise. Eleven ballot papers were rejected by the Returning Officer as invalid. Thereafter, the preferences cast in the remaining ballot papers were valued and the points counted. Respondents 2 to 11 were declared elected in the first count itself and Respondent No. 1 was elected in the fourteenth count. The appellant who was the "runner up", if such an expression may be used, filed an election petition. We are not now concerned with the several allegations in the election petition. We are only concerned with the dispute relating to the rejection of the eleven ballot papers. The Election Tribunal (T. S. Misra, J.) rejected the election petition on a ground which was found by this court to be wholly untenable in the appeal preferred by Kumari Shradha Devi against the rejection of her election petition. This court, while allowing the appeal, gave certain directions and remitted the matter back to the Election Tribunal. The Tribunal was directed to examine the ballot papers which had been rejected by the Returning Officer as invalid, ascertain the reasons for their rejection satisfy itself whether the reasons were tenable, decide upon the validity of each of the ballot papers in whole or in part and direct computation of the preferences over again. It was held by this court that a ballot paper could be valid in part and invalid in part, for instance, where the first few preferences were validly marked but the later preferences were invalidly marked, in which case the subsequent preferences were to be ignored and the earlier preferences were to be computed. After the remand, the Election Tribunal accepted as valid all the eleven ballot papers which had been rejected by the Returning Officer as invalid. In fact there is no dispute before us that ten out of the eleven ballot papers had been improperly rejected by the Returning Officer and the Election Tribunal was quite right in accepting them as valid. The dispute is only in regard to one ballot paper marked as Ballot Paper No. 6. This ballot paper was accepted by the Election Tribunal as valid despite the

fact that first reference was marked against the names of two candidates Manohara and Bhattacharya. The Election Tribunal thought that the numeral '1' marked against the name of Manohara was in fact not a mark put by the voter but something which had got stuck to the paper either at the time of manufacture or thereafter. The Election Tribunal therefore, took the view that the first preference had been marked for Bhattacharya only and proceeding on that basis, the preferences were valued and the points counted. Once again Respondent No. 1 secured more points. The Election Petition was dismissed again and the appellant is once more before us.

As already mentioned the dispute is now confined to Ballot Paper No. 6. All the three of us (Desai Chinnappa Reddy and Varadarian, JJ) examined the ballot paper with the naked eye and with the aid of a magnifying glass as well. We are not a little surprised that the Election Tribunal came to the conclusion that it did. The Tribunal said,

"I have perused that mark. At the outset it must be mentioned that the alleged mark is not in ink. It has also not been made with the aid of any other instrument. It seems that it is something which has struck with the paper. Either it was stuck while the paper was being manufactured or thereafter but it is not mark made by any elector.

Now I have also seen the ballot paper myself very closely and I am of the definite opinion that it is not a first preference mark made by the elector. It is something which is a manufacturing defect or any impurity. The tip of the mark is in the nature of 'Y' and is not a mark made by the elector with the aid of any instrument whatsoever.

I, therefore, record a finding that there is no mark

of first preference set opposite the name of Smt. Manohara. That being the position, there was only one first preference mark set opposite the name of Sri G. C. Bhattacharya."

We do not have the slightest hesitation in saying that there was clearly a mark—the numeral '1'—against the name of Manohara and that there was no manufacturing or other defect in the paper and nothing was stuck to the paper. Dr. Chitale appearing for respondent No. 1 tried to persuade us to accept the view of the Tribunal but we find it difficult to let our imagination run away

As we found at the earlier stage of hearing that two first preferences were marked in Ballot Paper No. 6, we came to the conclusion that it had to be excluded from the count as invalid. On that basis we required two officers of the Election Commission, who were appointed by us as Commissioners for that purpose, to value the preferences and count the points. The Commissioners have reported to us that as a result of the fresh count made by them, they have found that the first respondent has secured 3338 points and the appellant has secured 3315 points. The appellant has objected to the computation made by the Commissioners. The appellant says that the Commissioners were in error in making a recount by valuing all the 420 valid ballot papers instead of confining themselves to the ten disputed ballot papers which

have been found to be valid. The submission was that the 10 ballot papers which have been rejected by the Returning Officer, out of which have now been accepted may be treated as valid for fixing the minimum quota to be contained by a candidate in order to be declared elected, but should be ruled out for the purpose of counting votes cast in favour of any candidate. The submission is wholly devoid of any merit. We do not see how a recounting could be done in the manner suggested by the appellant. Such a method of recounting would be wholly alien to the scheme of counting explained and adumbrated at such length in the Schedule to the Representation of the People Act. The appellant attempted to take advantage of a sentence occurring in the earlier judgment of this court where it has been said, "the scrutiny and recount was to be confined specifically to the decision of the Returning Officer rejecting eleven votes as invalid." This court was not intending to lay down any new method of recounting the points. All that was meant was that the 11 rejected ballot papers were to be scrutinized in the light of the judgment of the court and thereafter a recount was to be made. The recount had to be in accordance with the provisions of the Representation of the People Act and the rules. Here we may refer to the following observations of this court in *Annuadh Prasad V. Rajeshwari Saroj Das & Other 1*.

"Initially, 306 ballot papers were accepted as valid by the Returning Officer. The minimum quota was fixed at 2551 :  $1306 \times 100 = 30600 \div 11 + 1 = 2550 + 1 = 2551$ . The High Court held that 6 ballot papers were wrongly rejected by the Returning Officer as a result of which the number of valid ballot papers rose to 312. The minimum quota correspondingly rose to 2601 :  $(312 \times 100 = 31200 \div 12 = 2600 + 1 = 2601)$ . The minimum quota which is fixed primarily on the basis of valid ballot papers is the key-point of counting and transfer of surplus votes. 'Surplus Votes' means votes in excess of the minimum quota and it is such surplus votes that are transferred to other candidates left in the field. The various rules and then working as illustrated in the Schedule to the Rules show that the system of proportional representation by a single transferable vote involves a progressive inter-linked method of counting votes. It is, therefore, difficult to accept the appellant's argument that a ballot paper may be treated as valid for fixation of the minimum quota but should be ruled out for purposes of counting the votes cast therein in favour of any candidate. If the ballot paper Ex. B/2 is valid, it must be treated as valid for all purposes and therefore the 1st preference vote contained therein in favour of respondent 8 must be counted in his favour. This would be so especially when the process can involve no recrimination between respondent 8 and the appellant, both of whom were successful candidates."

We have no hesitation in holding that the Commissioners appointed by the court recounted the points correctly in the manner provided by the Act. There is no order as to costs

New Delhi,

Dated the 23rd November, 1983.

Sd/-

D. A. DESAI...

O CHINNAPPA REDDY

A VARADARIAN

[No. 82/UP/2/79]

C I ROSE, Under Secy  
Election Commission of India

